



## VEXCEL EVALUATION AND MUTUAL NONDISCLOSURE AGREEMENT

This Evaluation Agreement (“**Agreement**”) is entered into effective as of the date (the “**Effective Date**”) that the party wishing to license Vexcel’s product (“**Licensee**”) accepts the terms of this Agreement with Vexcel Imaging US, Inc., a Delaware corporation (“**Vexcel**,” and together with Licensee, the “**Parties**”) by checking the acceptance box. In consideration of the mutual covenants contained herein, Vexcel and Licensee agree as follows:

### 1. LICENSE TERMS

1.1. **License Grant.** Vexcel grants to Licensee during the Term a non-exclusive, non-transferable license to (a) use, reproduce, and modify the Vexcel product set forth on Exhibit A (“**Evaluation Data**”); and (b) create derivatives from the Evaluation Data, in all cases solely for Licensee’s internal use and solely for the purpose of evaluating whether to license products from Vexcel (the “**License**”). Vexcel may update the Evaluation Data at any time by providing written notice to the email address provided in the evaluation sign-up.

1.2. **License Restrictions.** Licensee shall not do any of the following, except and solely to the extent expressly permitted by Section 1.1 (License Grant): (a) copy, reproduce, modify, market, grant access to, display, distribute, sell, rent, lease, sublicense, assign, or commercially exploit the Evaluation Data; or (b) remove, bypass, or circumvent any electronic or other forms of protection measure included on or with the Evaluation Data.

### 2. ACCESS

2.1. **Access.** Licensee may access the Evaluation Data as set forth on Exhibit A. Vexcel grants to Licensee a nonexclusive, nontransferable right to use the Vexcel API and the Vexcel Viewer, as applicable, to access the Evaluation Data for the duration of the Term. Vexcel does not guarantee access to the Evaluation Data through the Vexcel API or the Vexcel Viewer and Vexcel is under no obligation to provide Licensee with any support regarding the Vexcel API or the Vexcel Viewer or access to the Evaluation Data. Vexcel may terminate Licensee’s access to the Vexcel API and the Vexcel Viewer without notice if Licensee engages in abusive behavior. “**Vexcel API**” means the application programming interface that Vexcel currently provides to its customers that enables a user to access Vexcel’s hybrid cloud-based service that provides Vexcel’s products programmatically. “**Vexcel Viewer**” means Vexcel’s browser-based viewing application that allows users to interact with Vexcel’s products.

2.2. **Access Security.** Licensee must keep its users’ login credentials, including without limitation usernames and passwords, secure and confidential and must use commercially reasonable efforts to prevent unauthorized access to or use of its account. Licensee must promptly notify Vexcel of any unauthorized access or use of Vexcel’s product, including the Evaluation Data.

3. **OWNERSHIP.** Vexcel owns all right, title, and interest in the Evaluation Data and Vexcel’s product, all copies thereof and customizations and modifications thereto, all materials used by Vexcel to provide the Evaluation Data, and the Vexcel trademarks and trade names authorized by Vexcel (collectively, the “**Vexcel Materials**”). Except for the License, nothing herein transfers or conveys to Licensee any right, title, or interest in the Vexcel Materials. Licensee shall not take any action with respect to Vexcel’s intellectual property that is inconsistent with the foregoing.

4. **FEES.** Licensee may use the License free of charge. If Licensee intentionally consumes Vexcel product other than the Evaluation Data, or if Licensee consumes any Vexcel product (including Evaluation Data) outside

of the Term, then Licensee shall pay Vexcel Vexcel's current price for such product. Any amounts due under this Agreement shall be invoiced and paid in U.S. dollars net 30 days from date of invoice.

## **5. LICENSEE COVENANTS**

5.1. Compliance with Laws. The Parties shall comply with all applicable laws and regulations in performing their obligations under the Agreement, including all applicable employment, tax, data-privacy, export-control, and environmental laws and regulations; *provided* that Vexcel's compliance with applicable data-privacy laws and regulations is conditioned upon Licensee's compliance with Section 5.3. In addition, Licensee waives any damages that may be recovered as a result of a breach by Vexcel of applicable data-privacy laws if Licensee would not have incurred such damages but for Licensee's use of the Product beyond internal use. The Parties shall not export, re-export, sell, resell, or transfer any export-controlled commodity, technical data, or software (a) in violation of any law, regulation, order, policy, or other limitation imposed by the United States (including the United States Export Administration regulations) or any other government authority with jurisdiction; (b) to any country in violation of any applicable embargo; or (c) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent. Without limiting the foregoing, the Parties shall comply with the United States Foreign Corrupt Practices Act and any anti-bribery or similar law or regulation in any jurisdiction where business is conducted or services performed in connection with the Agreement.

5.2. Compliance with Terms of Google Maps/Google Earth for Viewer Use. The Viewer may use geocoding services accessed from Google Maps/Google Earth. Licensee shall comply with the Google Maps/Google Earth Additional Terms of Service posted at [https://www.google.com/intl/en\\_us/help/terms\\_maps.html](https://www.google.com/intl/en_us/help/terms_maps.html) (the "**Google-Maps Terms**") when using any Google geocoding services. If there is any inconsistency between this Agreement and the Google-Maps Terms, the Google-Maps Terms will control.

5.3. No PII. Licensee shall not share any information with Vexcel when accessing the Vexcel API or using the Evaluation Data in any manner that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual ("**PII**"). Vexcel does not accept PII associated with Licensee's licensing of the Evaluation Data and hereby rejects any submissions of PII.

5.4. No Reverse-Engineering. Licensee shall not reverse engineer, decompile, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, or other information from the executable code portions of the Vexcel API, the Vexcel Viewer, or Vexcel's hybrid cloud-based service, except to the extent allowed by applicable law.

**6. WARRANTY DISCLAIMER.** THE EVALUATION DATA, THE VEXCEL API, AND THE VEXCEL VIEWER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, AND VEXCEL DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO THE EVALUATION DATA, THE VEXCEL API, AND THE VEXCEL VIEWER, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATION, CONTENT, OR RESULTS, OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. VEXCEL DOES NOT WARRANT THAT (a) THE EVALUATION DATA, THE VEXCEL API, OR THE VEXCEL VIEWER WILL MEET THE BUSINESS REQUIREMENTS OF LICENSEE; (b) THE

EVALUATION DATA, THE VEXCEL API, OR THE VEXCEL VIEWER WILL BE ACCESSIBLE, AVAILABLE, ACCURATE, CURRENT, OR COMPLETE, OR THAT THE OPERATION OF THE EVALUATION DATA, THE VEXCEL API, OR THE VEXCEL VIEWER WILL BE COMPLETELY SECURE, ERROR-FREE, OR UNINTERRUPTED; OR (c) ANY ERRORS WILL BE CORRECTED. VEXCEL SHALL HAVE NO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE EVALUATION DATA, THE VEXCEL API, OR THE VEXCEL VIEWER RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS CONNECTIONS OR EQUIPMENT. THE SUPPLIERS OF VEXCEL MAKE NO DIRECT WARRANTY OF ANY KIND TO LICENSEE UNDER THIS AGREEMENT.

## 7. CONFIDENTIAL INFORMATION

7.1. Obligations. Each Party (“**Recipient**”) acknowledges that confidential information (including trade secrets and confidential technical, financial, and business information) of the other Party (“**Discloser**”) may be disclosed pursuant to this Agreement (collectively, “**Confidential Information**”). For the avoidance of doubt, Vexcel’s Confidential Information includes without limitation Vexcel’s product, the Evaluation Data, the terms and conditions of this Agreement, and any pricing information for the Product that is provided in connection with the evaluation performed by Licensee under this Agreement (whether such pricing information is provided before, contemporaneous with, or after entry into this Agreement). Recipient shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of Discloser. Recipient shall not disclose or use the Confidential Information of Discloser except for the purpose of fulfilling its obligations or exercising its rights under this Agreement. Recipient shall promptly report to Discloser any unauthorized use or disclosure of Discloser’s Confidential Information that Recipient becomes aware of and provide reasonable assistance to Discloser (or its licensors) in the investigation and prosecution of any such unauthorized use or disclosure. The pricing provided by Vexcel to Integrator, if any, is Vexcel’s Confidential Information, not Integrator’s, and Vexcel may share such information with third parties. The obligations of confidentiality will continue for two years from the Effective Date, notwithstanding the earlier termination of this Agreement.

7.2. Exclusions. Information will not be subject to the restrictions set forth above to the extent that such information (a) is already known by Recipient without an obligation of confidentiality; (b) is publicly known or becomes publicly known through no unauthorized act of Recipient; (c) is rightfully received from a third party without any obligation of confidentiality; (d) is independently developed by Recipient without use of the Confidential Information of the Discloser; or (e) is required to be disclosed pursuant to a requirement of a governmental agency or law (provided that Recipient provides Discloser with notice of such requirement prior to any such disclosure and takes steps reasonably necessary to maintain the information in confidence).

7.3. Responsibility for Third Parties. Recipient shall, and shall cause its employees, contractors, and consultants who have access to Confidential Information of Discloser (and where Recipient is Licensee, all employees, contractors, regulators, external auditors, and consultants of Recipient who have access to Confidential Information of Discloser) (collectively, the “**Additional Recipient Parties**”), to safeguard and maintain the Confidential Information of Discloser in strict confidence. Recipient shall not, and shall ensure that the Additional Recipient Parties do not, disclose, provide, or make such Confidential Information available to any third party except to Recipient’s employees, contractors, and consultants who have a need to access such Confidential Information to enable Recipient to fulfill its obligations or exercise its rights under this Agreement.

## 8. LIMITATION OF LIABILITY

Each Party's recovery of damages for breach of this Agreement is limited to documentable damages that arise directly from such breach, subject to a cap of \$1,000; provided, however, that such cap does not apply to any statutory damages that may be available under the Copyright Act, 17 U.S. Code §504(c).

## 9. INDEMNIFICATION

9.1. Indemnification by Licensee. Licensee shall indemnify, defend, and hold harmless Vexcel, its affiliates, employees, officers, directors, and shareholders from any third-party claim that arises from Licensee's use of the Evaluation Data (or any other Vexcel product accessed during the Term by Licensee) outside of internal use (a "**Vexcel Claim**"). Licensee shall pay reasonable attorneys' fees incurred by Vexcel in connection with any Vexcel Claim.

9.2. Indemnification by Vexcel. Vexcel shall indemnify, defend, and hold harmless Licensee, its affiliates, employees, officers, directors, and shareholders from any third-party claim that the Evaluation Data infringes such third party's intellectual property rights (a "**Licensee Claim**") so long as such claim is limited to Licensee's non-commercial internal use. Vexcel shall pay reasonable attorneys' fees incurred by Licensee in connection with any Licensee Claim.

9.3. Procedures. Each Party's indemnification obligations set forth in this section are subject to the conditions that the Party seeking indemnification must (a) notify the indemnifying party promptly in writing of such claim, provided that failure to so notify shall not relieve the indemnifying party of its obligations except to the extent that the indemnifying party is actually prejudiced by such failure to give prompt notice; and (b) fully cooperate with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of such claim, and (c) give the indemnifying party sole control of the defense and settlement of any claim so long as such settlement is either (i) approved in writing by the indemnified party (and in the case of Vexcel, by the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer of Vexcel (each, an "**Authorized Representative**" of Vexcel)); or (ii)(A) is for monetary damages only; (B) does not involve any finding or determination of wrongdoing or violation of law by the indemnified party; and (C) provides for a full, unconditional, and irrevocable release of the indemnified party in connection with such claim. The indemnity provided under this section shall be the sole and exclusive remedy for any third-party claim.

## 10. TERM AND TERMINATION

10.1. Term and Termination. This Agreement shall commence on the Effective Date and continue for 90 days (such period, the "**Term**"). Either party may terminate this Agreement at any time by giving notice to the other Party.

10.2. Effect of Termination. The license granted hereunder terminates upon termination of this Agreement and Licensee shall immediately cease all use, and destroy all copies, of the Evaluation Data; *provided*, however that Licensee may retain Evaluation Data as part of regular computer back-ups for the period such records are normally archived so long as Licensee does not access such Evaluation Data unless required to pursuant to an external audit or legal proceedings.

## 11. GENERAL

11.1. Entire Agreement; Amendments; Waiver. This Agreement sets forth the entire understanding and agreement of the Parties and supersedes any oral or written agreements or understandings between the Parties as

to the subject matter of the Agreement, including, without limitation, any terms in a purchase or acknowledgement provided by Licensee. This Agreement may only be changed by a written agreement signed by both Parties (and in the case of Vexcel, an Authorized Representative of Vexcel). The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

11.2. Injunctive Relief. Any material breach of this Agreement by either Party may cause irreparable injury and monetary damages may not be a sufficient remedy. Each Party is entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach, and the breaching Party waives the defense that there is an adequate remedy at law. The above will not be construed to limit the remedies available to any Party.

11.3. Cumulative Remedies. Except as otherwise set forth in this Agreement, all rights and remedies provided in this Agreement are cumulative and not exclusive. The exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity or otherwise, in this Agreement or any other agreement between the Parties.

11.4. Governing Law; Venue. Any dispute arising under this Agreement will be governed by the laws of Colorado without giving effects to its conflict-of-law principles. The Parties submit to the exclusive jurisdiction of the state and federal courts located in Denver, Colorado for any legal action arising out of this Agreement. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (1980).

11.5. Assignment. Neither Party may assign nor transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement to any third party without the other Party's prior written consent (in the case of Vexcel, such consent to be provided by an Authorized Representative); *provided*, however, Vexcel may assign this Agreement to any successor to its business or assets, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and shall not confer any rights or remedies upon any person or entity not a party hereto.

11.6. Notice. Any notice under this Agreement to Licensee will be provided to the email address provided in the evaluation signup. Any notice under this Agreement to Vexcel must be in writing and delivered by overnight courier to Vexcel Imaging US, Inc., Attention: Legal Department, 12503 E Euclid Drive, Suite 20, Centennial, CO.

11.7. Section Headings. The headings or captions used in this Agreement are for reference purposes only and are not intended to be used or relied upon in interpreting or enforcing this Agreement.

11.8. Severability. To the extent that any provision, portion, or extent of this Agreement is deemed to be invalid, illegal, or unenforceable, such provision, portion, or extent shall be severed and deleted or limited to give effect to the intent of the Parties insofar as possible, and the remainder of this Agreement shall remain binding upon the Parties.

## **EXHIBIT A**

### **EVALUATION DATA**

**AOIS include select portions of the following cities:**

- San Francisco, CA, USA
- Fort Myers, FL, USA
- Shelbyville, TN, USA
- Medical Lake, WA, USA
- Madrid, Spain
- London, UK
- Sydney, NSW Australia

**Imagery (Blue Sky and Gray Sky, as made available):**

#### **Urban True Ortho Imagery**

- *Image type:* Orthorectified imagery with 7.5cm GSD or better
- *Image format:* 3-band (RGB or CIR) imagery JPEG Q95
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

#### **Urban Oblique Imagery**

- *Image type:* Oblique images with 7.5cm GSD or better
- *Image format:* 3-band (RGB) imagery JPEG Q95
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

#### **Urban Nadir Imagery**

- *Image type:* Nadir images with 7.5cm GSD or better
- *Image format:* 3-band (RGB or CIR) imagery JPEG Q95
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

#### **Wide-Area Ortho Imagery**

- *Image type:* Orthorectified imagery with 15/20cm GSD or better
- *Image format:* 3-band (RGB or CIR) imagery JPEG Q95
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

**Elevate:**

#### **Elevate: Urban DSM**

- *Product description:* Digital surface model raster with 7.5cm GSD or better
- *Data format:* 32-bit, single-band GeoTIFF
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

**Elevate: Wide-Area DTM**

- *Product description:* Digital terrain model raster with 15/20cm GSD or better
- *Data format:* 32-bit, single-band GeoTIFF
- *Spatial reference system:* Spherical Mercator/WGS84 (EPSG:3857)

**Elements:****Elements: Property Attributes**

- *Product description:* Information on whether certain features exist on the property where a building is situated, such as pools, playgrounds, trampolines, and sport courts
- *Data format:* JavaScript Object Notation (JSON) with key-value pairs and geometric Well-Known Text (WKT)

**Elements: Building Attributes**

- *Product description:* Attributes of a building, such as information regarding a building's roof and surrounding defensible space
- *Data format:* JavaScript Object Notation (JSON) with key-value pairs and geometric Well-Known Text (WKT)

**Elements: Damage Assessment**

- *Product description:* Information regarding roof and structure damage of a building along with pre-damage Building Attributes and Property Attributes
- *Data format:* Java Script Object Notation (JSON) with key-value pairs and Well-Known Text (WKT)